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3rd meeting
held on
Monday, 26 September 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 3rd MEETING

Chairman: Mr. LAMPTEY (Ghana)

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The meeting was called to order at 3.35 p.m.

ELECTION OF VICE-CHAIRMEN AND RAPPORTEUR

1. The CHAIRMAN said that consultations on filling the posts of Vice-Chairmen and Rapporteur were in progress and urged those concerned to reach agreement quickly. He suggested that the election should be postponed until the following meeting.

2. It was so decided.

ORGANIZATION OF WORK (A/C.6/49/1; A/C.6/49/L.1)

3. The CHAIRMAN said that the Secretariat's note on the organization of work was contained in document A/C.6/49/L.1. Section II of that note listed the documentation relating to the items allocated to the Sixth Committee, with their titles, symbols and projected dates of issuance. Paragraph 6 of section III contained the tentative agreement on the timetable of work concluded in the framework of the consultations organized by the Legal Counsel, and paragraph 7 contained the suggestion of the Secretariat concerning an additional agenda item referred to the Sixth Committee, namely, item 157, "Question of criteria for the granting of observer status in the General Assembly".

4. Ms. WILLSON (United States of America) said that, since the new item had been added after the consultations on the programme of work, it might be necessary to make some adjustments in order to allot sufficient time to that item. She suggested that a first meeting should be devoted to a discussion of the type of work to be conducted in the Committee, followed by three meetings of informal consultations in which to work out the criteria, a task that should as far as possible be completed at the current session. Lastly, two meetings in early November should be set aside for a short discussion of the work completed.

5. Mr. CHATURVEDI (India) supported the United States suggestions and noted the necessity of making sure that none of the formal or informal meetings conflicted in the new timetable.

6. Ms. CARYANIDES (Australia) also supported the United States suggestions but observed that it would nevertheless be necessary to set aside more time than had been indicated by the United States representative.

7. The CHAIRMAN said he took it that the Committee approved the proposed timetable on the understanding that it would be applied with the necessary flexibility according to the progress of the work.

8. It was so decided.

9. The CHAIRMAN drew the Committee's attention to section IV of the Secretariat's note regarding the establishment of working groups and holding of consultations. He added that, with respect to item 136 (United Nations Decade

of International Law), the General Assembly, in its resolution 48/30, had requested the Working Group on the United Nations Decade of International Law to continue its work during the forty-ninth session, in accordance with its mandate and methods of work. Consultations continued regarding the election of the Chairman of the Working Group. The chairmen of the working groups would later be required to determine the schedule of meetings of their respective groups, in consultation with the Bureau of the Sixth Committee.

10. Concerning agenda item 141 (Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice), the General Assembly, by resolution 48/37, recommended that a working group should be re-established in the framework of the Sixth Committee at its forty-ninth session in the event that further work was required for the elaboration of the draft convention. The Ad Hoc Committee had itself, in paragraph 29 of its report as contained in document A/49/22, recommended that the Working Group should meet for a two-week period, preferably in October or November. He took it that the Committee endorsed the tentative agreement arrived at during the informal consultations that the Working Group should meet during the period 3 to 14 October.

11. It was so decided.

12. The CHAIRMAN said he took it that the Committee wished to elect Mr. Philippe Kirsch of Canada as Chairman of the Working Group on the elaboration of a convention on the safety and security of United Nations and associated personnel.

13. It was so decided.

14. The CHAIRMAN recalled that, with respect to agenda item 143 (Convention on jurisdictional immunities of States and their property), the General Assembly had decided that consultations should be held in the framework of the Sixth Committee during one week at the beginning of its forty-ninth session, namely, from 26 to 30 September 1994. There was general agreement to elect as Chairman of the consultations Mr. Carlos Calero-Rodrigues of Brazil, who had fulfilled that function for the two previous years. He took it that the Committee wished to elect Mr. Calero-Rodrigues to that post.

15. It was so decided.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (A/49/17; A/49/427)

16. Mr. MORÁN BOVIO (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the item, recalled that during its twenty-sixth session in 1993, the Commission had adopted the UNCITRAL Model Law on Procurement of Goods and Construction, whose formulation had been entrusted to the Working Group on the New International Economic Order. The Commission had earlier decided to postpone preparation of that Model Law mainly because of the different considerations governing the procurement of goods and construction, on

the one hand, and the procurement of services on the other. Nevertheless, given that many States lacked laws regarding the procurement of services, or that such laws, where they existed, were not sufficiently applicable, UNCITRAL, in lieu of preparing a separate Model Law dealing only with services, decided that it would be better to formulate the pertinent provisions within the Model Law on the Procurement of Goods and Construction, in a consolidated text dealing with the procurement of goods and construction, and, in a separate chapter, the procurement of services. Those States wishing to limit themselves to the previous subject could continue using the Model Law.

17. The main difference between the procurement of goods or construction and the procurement of services was that, in the former, the predominant evaluation criterion was price, while in the latter it was the professional competence and ability of the service provider. That difference was provided for in the Model Law, which, in the case of services, enabled the procuring entity to give greater prominence to the competence and abilities of the service provider, while maintaining the objectives of economy and efficiency and respecting fairness and competitiveness in the procurement process.

18. The work of UNCITRAL in the area of procurement had increased in importance as the project progressed, owing, firstly, to the decrease in recent years of available funds for public expenditure, which necessitated greater efficiency in the management of public funds; and, secondly to recent reforms in political and economic structures in many States, particularly the countries of Eastern Europe, whose economies were in transition, which had led to considerable changes in legal procedures in the area of public procurement. The Model Law had elicited great interest in the context of the general move towards privatization, in which many more Governments were engaging in open, competitive procurement of services. The increased importance of that question was evidenced by the extension of the GATT Agreement on Government Procurement to cover services and also the Directive of the European Union on contracts for procurement of services.

19. As with the previous Model Law, the Commission had adopted a Guide to Enactment of the Model Law which was intended to assist executive branches of government and parliaments to adapt their domestic legislation to the Model Law.

20. In addition to the Model Law, the Commission had also discussed the first draft of the Guidelines for Preparatory Conferences in Arbitral Proceedings as prepared by the Secretariat. The purpose of the Guidelines was to assist practitioners in planning arbitral proceedings. Such planning was necessary because the arbitration rules and laws typically allowed the arbitral tribunal broad discretion and flexibility in the conduct of arbitral proceedings. The absence of such planning was likely to lead to misunderstandings, delays and increased costs of proceedings. One of the important objectives of the Guidelines was to increase predictability and effectiveness of the arbitral process without sacrificing the beneficial flexibility of the process.

21. He then referred to a series of reports of the Working Groups and the Secretariat on various projects currently being undertaken by the Commission.

The latter had received the reports of the Working Group on Electronic Data Interchange regarding the preparation of legal rules on electronic data interchange, had expressed its appreciation for the work accomplished by the Working Group thus far and had expressed the view that the draft set of basic provisions could be completed by the Working Group at its twenty-eighth or twenty-ninth session and submitted to the Commission at its next session.

22. The Commission had also examined the reports of the Working Group on International Contract Practices, especially those on its twentieth and twenty-first sessions, at which the Working Group had continued the preparation of a draft convention on independent guarantees and stand-by letters of credit. The Commission had noted that the Working Group had modified the title of the draft convention to refer to "independent guarantees and stand-by letters of credit" instead of "guaranty letters", had expressed its appreciation to the Working Group, and had requested that, if possible, it should submit the draft convention to the Commission at its twenty-eighth session in 1995.

23. With regard to the system for collection of case-law on UNCITRAL texts (CLOUT), the Commission had noted with appreciation the existence of three editions of the CLOUT abstracts series containing abstracts on 52 court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. The conviction had been widely expressed that CLOUT would be beneficial, in particular in promoting the uniform interpretation and application of the statutory texts of UNCITRAL. The Commission had also noted that the Secretariat's work would increase as the number of decisions and awards covered by CLOUT increased; it had therefore requested the Secretariat to ensure that adequate resources were allocated for the effective operation of CLOUT.

24. He recalled that UNCITRAL had reviewed the current status of the legal texts prepared by it.

25. As had been the case in the previous session, the Commission had expressed its concern about the situation that had arisen in the law regarding the transport of goods by sea, as a result of the coexistence of the liability regime of the Hamburg Rules with the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague Rules). Such mixing of legal regimes increased legal costs, made it difficult for the carrier to assess its liability exposure, complicated settlement negotiations, hindered the use of uniform transport documentation, distorted competition among carriers and resulted in an unequal treatment of the carrier's customers. It had been suggested that the Hamburg Rules should be revised in order to elaborate a regime that would be more widely acceptable. The Commission was of the view that such a course of action was undesirable. There was no convergence of opinion as to the provisions that might be modified or the thrust of any modification. In addition, throughout the preparatory work towards the Hamburg Rules all interest groups had participated in the negotiations and the adopted solutions reflected the well-considered mutual concessions between the groups. It had therefore been suggested that the Hamburg Rules should be adopted broadly

within a short space of time, which would allow the functioning of the system to be monitored and new solutions to be added as a result of developments in practice and new transport techniques. Emphasis had been placed on the need for the Secretary-General to increase efforts to promote wider adherence to the Hamburg Rules, including by disseminating information and in-depth explanations of the benefits that could be drawn by participants.

26. In the area of technical training and assistance, the Commission had noted that, since national seminars were more cost-effective than regional seminars, the Secretariat had continued to emphasize the former.

27. The growing awareness of the UNCITRAL legal texts in many countries, in particular developing and newly independent States, was resulting in increased requests from countries considering adoption of legislation based on UNCITRAL texts. The Secretariat had emphasized that its ability to provide that type of assistance depended on the availability of resources from the UNCITRAL Trust Fund for Symposia, no funds for the travel of participants and lecturers being provided in the regular budget. Those costs must therefore be met by means of contributions to the Trust Fund. In that respect, he noted that a contribution on a multi-year basis had been made by Canada, and that contributions from France and Switzerland had been used for the seminar programme. The Commission had emphasized the need for States to consider making contributions to the Trust Fund so as to enable the Secretariat to meet the increasing demands for training and technical assistance, especially in developing and newly independent States. The Commission had also noted the need to ensure that sufficient human resources would be available for meeting the increasing demand for seminars and technical assistance.

28. As to the future programme of work, he recalled that the Commission had decided to consider the possibility of working on issues regarding legal aspects of receivables financing, cross-border insolvency and build-operate-transfer projects. The Commission had considered those three projects on the basis of reports on possible future work prepared by the Secretariat.

29. Regarding legal aspects of receivables financing, the Commission had expressed its appreciation to the Secretariat for pursuing cooperation with the International Institute for the Unification of Private Law (UNIDROIT), which was preparing a draft convention on security interests in mobile equipment, and with the European Bank for Reconstruction and Development (EBRD), which had prepared a Model Law on Secured Transactions. The Commission had requested the Secretariat to prepare a study that would discuss in more detail the issues that had been identified, possibly accompanied by a first draft of uniform rules. With regard to cross-border insolvency, a Colloquium had been held in Vienna from 17 to 19 April 1994 by the Secretariat, with the cooperation and assistance of INSOL International. On the basis of a current assessment of feasibility and the discussions and consultations which had taken place at the Colloquium, it had been possible to identify a number of sub-areas in which the Commission could work, such as judicial cooperation and access and recognition.

30. Other possible projects might concern the formulation of a set of model legislative provisions on insolvency and the drafting of a model insolvency code. The Commission requested the Secretariat to proceed on that basis, placing particular emphasis at the current stage on the issues of judicial cooperation and of access and recognition.

31. With regard to possible future work in the area of build-operate-transfer (BOT), the Commission noted that the Secretariat continued to monitor the work of the United Nations Industrial Development Organization (UNIDO) on the preparation of "Guidelines for the Development, Negotiating and Contracting of BOT Projects". Particular interest had been expressed in the Secretariat's proposal, once those Guidelines had been finalized, to study the desirability and feasibility of work by the Commission on some of the problems raised in connection with the BOT projects, including, for example, the creation of an enabling statutory framework for BOT projects by supplementing the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.

32. Mr. CALERO RODRIGUES (Brazil) said that once again the report of the Commission provided evidence of UNCITRAL's effective contribution to the development of international trade law. The delegation of Brazil considered that both the draft text of a Model Law on Procurement of Goods, Construction and Services and the draft Guide to Enactment of that Model Law, which had taken the UNCITRAL Secretariat many long hours to prepare, would significantly assist developing and developed countries in enhancing their existing procurement laws and thus contribute to the development of harmonious international economic relations.

33. His delegation also welcomed the draft Guidelines for Preparatory Conferences in Arbitral Proceedings and hoped that the text could be finalized at the next session of the Commission. Comments at the Twelfth International Arbitration Congress, to be held soon in Vienna, would be instructive, especially in determining to what extent the term "preparatory conferences" had been endorsed. In paragraph 117 of the report several alternatives had been proposed, one of which might perhaps be preferable.

34. The Brazilian delegation noted with satisfaction that the Working Group on International Contract Practices had prepared a draft convention on independent guarantees and stand-by letters of credit.

35. Another important subject discussed by the Commission had been the legal issues in electronic data interchange (EDI). His delegation hoped that the Working Group on that subject would continue the discussion of a uniform law on EDI and proceed expeditiously with the preparation of the relevant text.

36. Brazil joined the Commission in noting with appreciation the existence of three editions of the Case-Law on UNCITRAL Texts (CLOUT) abstracts series containing abstracts on 52 court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. It also

commended the Secretariat on its cooperation with UNIDROIT and considered very useful the cooperation with the European Bank for Reconstruction and Development, which had made possible the conclusion of a Model Law on Secured Transactions.

37. The Brazilian delegation noted with satisfaction the recommendation made by the Commission on the use in international trade of the revision of the International Chamber of Commerce "Uniform Customs and Practice for Documentary Credits" (UCP 500). It was also pleased that the Secretariat was implementing an active programme of training and assistance in the various fields of international trade law and continuing to place emphasis on national seminars.

38. Mr. MARTENS (Germany) said that the report on the Status of Conventions (A/CN.9/401) gave a factual and sober account of the Commission's work and its international acceptance. The successes of the Commission in the previous five years were attributable to a large degree to the efforts of the Secretariat. Chapter IX of the Commission's report (A/49/17) and document A/CN.9/400 gave a detailed account of the Commission's impressive work in promoting the conventions, model laws and legal guides prepared by UNCITRAL and of the seminars and symposia conducted to promote the dissemination of those texts in the developing countries. He referred particularly to the conference held that month at the Cairo Regional Centre for International Commercial Arbitration.

39. He was pleased to note that, at the 1994 session, the Commission had revised the UNCITRAL Model Law on Procurement of Goods and Construction with the addition of a chapter on services, with the result that the Model Law now encompassed all areas of public procurement - goods, construction and services. He was also gratified that the Secretariat had added a chapter on the procurement of services to the Guide to Enactment of the UNCITRAL Model Law on Procurement of Goods and Construction. He was pleased to note that several countries had introduced changes into their procurement practice, as a result of which their industrial sectors would also have to redefine their position, a significant step towards the creation of a uniform international commercial law. That was renewed proof of the important role played by the Commission in the development and implementation of international commercial law within the international community.

40. The Commission had already embarked on a practical evaluation and analysis of the results of the Congress held in 1992, especially the Guidelines for Preparatory Conferences in Arbitral Proceedings, and hoped that it would be possible in 1995 to adopt the final text, which promised to have a far-reaching impact.

41. The Case-Law on UNCITRAL Texts (CLOUT) would facilitate and guarantee a uniform interpretation and application of the texts prepared by the Commission. It was therefore absolutely imperative that the Secretariat should be in a position to carry out the new tasks created by CLOUT on a permanent basis and without neglecting other essential duties. The necessary funds must be made available for that work, which included the editing, registering, filing and translation of court decisions and arbitral awards.

42. He doubted whether it was appropriate for the Commission to deal with the legal aspects of receivables financing, since that question might overlap with the work of UNIDROIT. In that context, he expressed support for the rationalization of the work of UNCITRAL and felt that the holding of consecutive meetings would not lead to a reduction in costs because member States would have to be represented in the various working groups by different experts.

43. Ms. SAEKI (Japan) said that the Commission's major accomplishments were largely due to its tradition of conducting its work from the legal and technical standpoints.

44. The Commission had completed its work on a draft Model Law on Procurement of Goods, Construction and Services, which she hoped would provide useful guidance for countries in the process of consolidating their procurement legislation.

45. The Working Group on International Contract Practices had made substantial progress on a draft convention on independent guarantees and stand-by letters of credit. In regard to provisional measures and jurisdiction, a flexible approach was the most appropriate, since existing procedural rules in member States would be considerably affected.

46. The decision of the Working Group on Electronic Data Interchange to use the term "model statutory provisions" would enable States to adopt a flexible approach. The delegation of Japan believed that more time and effort were required for the Working Group to complete its work and was therefore doubtful whether it was appropriate to adopt the model provisions at the Commission's twenty-eighth session.

47. In deciding on the future work of the Commission, consideration must be given to the actual need for and the feasibility of tasks to be entrusted to it. The unification of law of business transactions required cooperation among various international organizations, when work should be coordinated by the Commission. It was most important for the special field of competence of each organization to be respected so as to avoid duplication of efforts.

The meeting rose at 4.50 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

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SIXTH COMMITTEE
4th meeting
held on
Thursday, 29 September 1994
at 3 p.m.
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SUMMARY RECORD OF THE 4th MEETING

Chairman: Mr. LAMPTEY (Ghana)

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AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued)

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The meeting was called to order at 3.35 p.m.

ELECTION OF THE VICE-CHAIRMEN AND RAPPORTEUR

1. The CHAIRMAN said that the consultations on the election of the other officers of the Committee had been unsuccessful; he therefore urged the parties directly involved to work out a compromise so that the issue would not have to be resolved through the application of the relevant provisions of the rules of procedure. If he heard no objections, he would take it that the Committee agreed to defer the election of the two Vice-Chairmen and the Rapporteur to the following meeting.

2. It was so decided.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued) (A/49/17 and A/49/427)

3. Mr. STRAUSS (Canada) said it was to be hoped that the Committee would recommend to the General Assembly that it adopt a resolution encouraging States to consider promulgating legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services.

4. The Working Group on International Contract Practices, of which Canada held the chairmanship, was nearing completion of its work on a draft convention on independent guarantees and stand-by letters of credit which, it was to be hoped, could be discussed at the next session of UNCITRAL. With regard to electronic data interchange, Canada believed that it was of the utmost importance for UNCITRAL to continue its efforts to achieve uniformity in laws affecting electronic data interchange; however, the rapid pace of technological change suggested that proposals for future work in that area must be considered thoroughly so as to ensure that the results would not only serve immediate needs, but would facilitate international trade in the future. His Government was currently holding consultations with governmental and private interests in that area.

5. With regard to the future work of UNCITRAL, his delegation encouraged the Commission to work in close cooperation with UNIDROIT in seeking uniformity in the area of assignment of claims. His delegation was pleased to note the cooperation between UNCITRAL and INSOL International in the area of cross-border insolvency and looked forward to the colloquium of bankruptcy judges which would take place in March 1995 in Toronto.

6. His Government was not in favour of the working groups holding consecutive meetings. He urged the Committee, in the resolution on UNCITRAL to be adopted at the current session, to leave the Secretariat free to schedule working group meetings taking into account the need to rationalize its work and to ensure prompt preparation and distribution of documents so as to enable delegations to

prepare thoroughly for meetings, thus ensuring the effective functioning of UNCITRAL.

7. Mr. CHATURVEDI (India) said that the Commission should continue its work on the draft Guidelines for Preparatory Conferences in Arbitral Proceedings. His country was currently reviewing its arbitration law with a view to encouraging more frequent resort to the arbitral process as opposed to litigation as a means of settling disputes, particularly in commercial matters.

8. With regard to the uniform legal rules on electronic data interchange prepared by the Working Group, his delegation believed that they would be of great help in clarifying the legal issues involved in electronic data interchange and avoiding disputes which could arise from the increasing use of electronic data interchange in international business and financial sectors. The rules to be adopted in that area must be sufficiently flexible and should provide for early review depending on technological advances. His delegation hoped that such issues as the scope of application of the rules and party autonomy would be resolved in future meetings of the Working Group on Electronic Data Interchange and that a draft set of core provisions could be completed.

9. With regard to the report of the Working Group on International Contract Practices, his delegation agreed that the title of the draft convention should refer to "independent guarantees and stand-by letters of credit" rather than use the term "guaranty letters".

10. With regard to the legal aspects of receivables, financing, UNCITRAL should emphasize cooperation with other organizations dealing with the same topic. His delegation supported the recommendation that the Secretariat should prepare a study that would discuss in more detail the issues that had been identified, possibly accompanied by a first draft of uniform rules.

11. The question of cross-border insolvency should be studied in greater depth since, in the management of the issue, complex legal issues could arise in cases involving corporations with activities in several countries.

12. His delegation had no objections to future work on build-operate-transfer (BOT) projects being undertaken by the Commission since, in the case of large-scale infrastructure projects, the use of guidelines for the development, negotiating and contracting of BOT projects could benefit developing countries.

13. Lastly, his delegation reaffirmed its support for the Commission's programme of training and assistance funded by the UNCITRAL Trust Fund for Symposia.

14. Mr. MOLDE (Denmark), speaking on behalf of the Nordic countries, noted with satisfaction that provisions on services had been added to the UNCITRAL Model Law on Procurement of Goods and Construction.

15. The Nordic countries believed that the work of UNCITRAL was progressing satisfactorily; they supported the principle that the Commission should deal

with topics of global significance while, at the same time, including in its work topics of special interest to developing countries.

16. With regard to the future work of UNCITRAL, it should be borne in mind that resources were scarce and that the Commission's main role was to facilitate tasks for the international business community. Therefore, the Commission should continue to produce texts of practical value within a relatively limited period of time, while avoiding duplication of work.

17. Mr. SIDI-ABED (Algeria) said that UNCITRAL was playing an increasingly important role in the development, harmonization and consolidation of the codification of international trade law. The subjects with which it dealt were of particular interest to the developing countries, which were doing their utmost to harmonize their laws with international rules concerning trade law and to adapt to the great changes that had recently taken place in the international economy. UNCITRAL must not lose sight of the fact that one of its major objectives was to secure the adoption of legal rules guaranteeing a degree of equity in international trade relations, so that the developing countries could receive treatment enabling them to overcome the difficulties posed for them by the international economic situation. In that regard, mention should be made of the measures being taken in his country to ratify various trade conventions or to accede to them.

18. With regard to the UNCITRAL Model Law on Procurement of Goods and Construction, he endorsed the decision by the Working Group to devote a separate chapter to procurement of services, since that would allow the necessary flexibility to enable countries to incorporate the Model Law already adopted into their trade legislation, and subsequently to incorporate the provisions relating to services.

19. His delegation considered that the Secretariat must continue its work with a view to submitting to the next session of UNCITRAL a revised draft on international commercial arbitration, which would allow for closer examination of the Guidelines for Preparatory Conferences in Arbitral Proceedings, the purpose of which was to facilitate their use by the parties.

20. His delegation expressed satisfaction at the progress made in the work on the draft convention on guarantees and stand-by letters of credit.

21. The harmonization of rules on electronic data interchange was a difficult task, particularly on account of the differences between developing and developed countries in that area and the speed with which the technological media used were evolving. For that reason, preparation of the draft provisions at the twenty-eighth or twenty-ninth session of UNCITRAL could constitute the general framework for facilitating wider use of media of that type at the international level.

22. His delegation again expressed its appreciation of the efforts made by the Secretariat to establish a system for collection and dissemination of information on case-law on UNCITRAL texts.

23. With regard to training, he noted with appreciation the efforts made by UNCITRAL to organize or assist in organizing seminars and symposia to promote the wider dissemination of international trade law, particularly in the developing countries, and urged it to continue those activities.

24. Lastly, UNCITRAL must strive to ensure the universality of its work by facilitating and encouraging participation by the developing countries in its own sessions and those of its working groups. In that way, universal accession to the legal instruments drafted under its auspices would be strengthened, and international cooperation would be the expression of a proper balance between the raison d'être of the Commission, namely, the development and harmonization of the rules of international trade law, and the need to secure lasting development for the developing countries.

25. Mr. LEGAL (France) said that his delegation particularly welcomed the adoption of a Model Law on Procurement of Services one year after the adoption of the Model Law on Procurement of Goods and Construction. It considered the solution of incorporating a specific chapter on services in the latter Model Law to be the correct one. In that way States would have at their disposal a single, coherent and highly flexible text which they could easily integrate into the framework of their domestic law.

26. With regard to the draft convention on guarantees and stand-by letters of credit, he hoped that the Working Group would be able to submit an appropriate text to UNCITRAL for adoption at its twenty-eighth session.

27. An order of priority should also be established for the work on electronic data interchange (EDI). His delegation believed it was necessary to study in depth the distribution of liability of the network of EDI users and service providers. That question had priority, even though UNCITRAL appeared to favour giving preference to preliminary work on rights in goods in a computer-based environment.

28. He expressed some reservations concerning the draft Guidelines for Preparatory Conferences in Arbitral Proceedings, as the draft appeared to be superfluous in the case of simple proceedings, could add unnecessary rigidity in complex cases, and significantly increased the cost of the proceedings. In addition, the preparatory conferences procedure favoured the better organized parties, inasmuch as they could block positions from the outset, an option not available to the other parties. Lastly, establishment of a preparatory conference would deprive the arbitral tribunal of its option of pronouncing on questions of procedure, and would thus contravene the provisions of the UNCITRAL Arbitration Rules.

29. His delegation observed that the French version of the working documents, and perhaps versions in other languages, were sometimes made available only very shortly before the sessions, and considered that an attempt should be made to rectify that situation, given that the quality of the consideration of the texts and of the preparation of UNCITRAL sessions and those of the working groups were at stake.

30. The convening of regional seminars to provide training in the techniques of international trade law was to be welcomed, and France expressed its support for the Trust Fund for Symposia mechanism intended to assist in financing travel expenses.

31. Ms. WILLSON (United States of America) said that the United States continued to support UNCITRAL's non-politicized and technically focused approach to work on trade law. The United States had recently deposited its instrument of accession to the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Protocol, and urged States that had not yet done so to ratify the Convention and the Protocol with a view to harmonizing rules in that area of trade law.

32. At the May 1994 plenary, UNCITRAL had carried out a preliminary review of the Guidelines for Preparatory Conferences in Arbitral Proceedings. The United States hoped that the Commission's future agenda would include work on procedural law, particularly in the areas of access to foreign courts and judicial cooperation concerning international bankruptcy.

33. The Commission had completed its first Model Law on Procurement of Goods and Construction in 1993, and a revised version had been produced in 1994 which included the procurement of services. The United States had supported that work and hoped that it would help to harmonize rules on public agency acquisitions internationally. The Model Law would promote efficiency, transparency and market orientation in regulations and commercial laws. That would result in greater openness to foreign bidding and would therefore enhance the flow of trade. It would thus be appropriate to pass a separate resolution on that subject in the General Assembly.

34. The United States considered that the draft Convention on Independent Guarantees and Stand-by-Letters of Credit would also facilitate trade and hoped that the Commission would complete work on it at the next plenary session in May 1995. To ensure the impact of the convention in the field of trade law, it would be necessary to submit it through the Sixth Committee to the General Assembly at its fiftieth session for adoption. Member States would then be able to begin the processes of signature and ratification. There were precedents for that procedure.

35. Lastly, she joined others in opposing the "back-to-back" scheduling of meetings, which made it difficult for experts on specialized topics to attend.

36. Mr. ZHANG Kening (China) praised the serious work done by the Commission, which had led to progress in the harmonization and unification of international trade law. The active participation and support of its members, together with contributions from other international organizations and from specialists in the subject from many countries, had resulted in the adoption of a series of conventions and model laws, including the Convention on Contracts for the International Sale of Goods, the Model Law on Procurement of Goods, Construction and Services, and the draft Guide to Enactment. It had also reviewed the work

of the Working Groups on Electronic Data Interchange and International Contract Practices.

37. Nevertheless, the adoption of conventions and model laws was only a first step in the Commission's work towards unification of trade law. The Commission should also adopt measures, including a publicity drive, to encourage speedy acceptance of such uniform laws by various States. The participation of developing countries in the Commission's work remained less than adequate. He hoped that the Commission would be able to create favourable conditions for increased participation by those countries in order to strengthen the universal basis for uniform legislation.

38. After recalling China's role in the Commission's work, and its accession to the various instruments drafted by the Commission, he repeated that his country wished to continue to contribute to the work of unification and harmonization of international trade. China would therefore be running for reelection for another term beginning next May.

39. Mr. MOTSYK (Ukraine) said that his delegation considered the Commission's work very useful for all countries, particularly for newly independent States, including Ukraine, which were in transition to a market economy and were developing their national legislation. Ukraine was a party to many instruments, such as the Convention on the Limitation Period in the International Sale of Goods. The Ukrainian Parliament had recently adopted the International Commercial Arbitration Act, based on the Commission's Model Law, and Regulations on International Commercial Arbitration and Regulations for Ukraine's Maritime Arbitration Commission.

40. Ukraine welcomed the adoption of the Commission's Model Law on Procurement of Goods, Construction and Services, which would foster integrity, confidence, fairness and transparency in the public procurement process. Objectivity, efficiency and competition would also be enhanced, as would the harmonization of rules in the sphere of international economic relations. Lastly, such measures would assist all States in formulating procurement laws or improving existing legislation. That was true of Ukraine, which was currently considering the possibility of elaborating national legislation in that field.

41. The Ukrainian delegation welcomed the Secretariat's initiative in preparing draft Guidelines for Preparatory Conferences in Arbitral Proceedings. Those guidelines, apart from their practical use, could have an important educational effect. The consideration of the draft guidelines had been very constructive, and he hoped that the Secretariat would be able to submit a revised text for consideration at the Commission's next session.

42. Ukraine welcomed the continuation of the work on the standardization of legal issues in electronic data interchange and the preparation of a uniform law on guarantees and stand-by letters of credit. It also gave full support to the decision to endorse the 1993 version of the Uniform Customs and Practice for Documentary Credits. That endorsement would promote world-wide acceptance of the instrument and facilitate international trade.

43. His delegation also appreciated the Commission's work in training and technical assistance, which would permit wider dissemination of its ideas and aims and facilitate the implementation of its legal instruments.

44. As to the future work of the Commission, Ukraine placed particular importance on the question of cross-border insolvency and on legal aspects of receivables financing. However, it did not fully agree with the decision to postpone consideration of legal issues in privatization. The principles governing the participation of foreign investors in privatization could soon be drafted. That would be of great assistance to countries in transition to a market economy.

45. Mr. SHESTAKOV (Russian Federation) said that his delegation welcomed the fact that the Commission's work was having practical results, an example being the Model Law on the Procurement of Goods, Construction and Services, whose application would result in more efficient use of money and would prevent conditions arising which could encourage corruption. At the same time, it would allow the process of harmonization of the various national laws on the subject to continue. The Model Law was the happy conclusion to a difficult task and represented a reasonable balance between the rights and obligations of the procuring entities on the one hand, and those of the suppliers or contractors on the other. Other multilateral instruments had been useful in that work, notably the GATT Agreement on Government Procurement, approved in the Uruguay Round. The Model Law was of practical importance to the Russian Federation, not only because public procurement represented a considerable portion of the national economy, but also because it would assist the country in the task of replacing the quite unsatisfactory variety of regulations currently in force in that sector.

46. Concerning the Guidelines for Preparatory Conferences in Arbitral Proceedings, to which the Commission had also given special attention during the twenty-seventh session, he said that such conferences should be held only in very complex cases. Once approved, the final version would make a worthwhile contribution to the improvement of arbitral proceedings.

47. It was important for the Commission to continue considering the legal issues which arose in the drafting of contracts or in the relations between users of electronic data interchange. However, notwithstanding the importance of those problems, particularly for future international commercial practice, it was clear that the Commission should first establish a clear definition of the basic legal issues.

48. With regard to the preparation of a draft convention on independent guarantees and stand-by letters of credit, he trusted that the text would be presented to UNCITRAL in 1995.

49. As to future work, his delegation noted with satisfaction that UNCITRAL had been carefully examining the various proposals made by participants at the 1992 Congress. The question of cross-border insolvency was of general interest, given that different procedures were currently being used to solve the problems

involved and that the development of world trade was closely tied to the need to regulate legal processes involving creditors and debtors domiciled in different countries. While it would not be advisable at the current stage to elaborate uniform legislation in that field, it would be useful to continue examining the question of granting foreign creditors access to the courts and that of recognition of orders issued by foreign courts in insolvency cases. In that connection, the proposal of INSOL International to organize a colloquium of judges on judicial cooperation in cross-border insolvency was logical.

50. UNCITRAL had, without question, made a valuable contribution throughout its existence to the development of international trade law. At the same time, it would not be fair to downplay the contribution of other international organizations in that respect. Accordingly, it was important that the Commission's work should be carried out in such a way as to avoid duplication.

51. It was encouraging to see that the UNCITRAL Secretariat continued to pay special attention to training and technical assistance, even though it did not have enough financial and human resources for the task. It was to be hoped that in the future countries with economies in transition could also actively participate in that process.

52. Mr. STAKER (Australia) said that his country had always participated actively in the work of UNCITRAL, an organization which played a key role in helping the United Nations pursue its goal of promoting the progressive harmonization and unification of international trade law.

53. The Commission's main project at its most recent session had been to extend the reach of the Model Law on Procurement of Goods and Construction to include procurement of services. He hoped that the completed text, which would have the effect of promoting economy and efficiency in government procurement, would find wide acceptance and application.

54. His country recognized the importance of the Commission's work in developing a draft convention on independent guarantees and stand-by letters of credit and in elaborating a uniform law on electronic data interchange, and would continue to participate actively in the relevant working groups. It commended, in particular, the forward-looking approach taken by UNCITRAL with regard to the legal issues arising from electronic data interchange and related means of data communication. It also trusted that the draft Guidelines for Preparatory Conferences in Arbitral Proceedings, the first draft of which had been considered at the Commission's twenty-seventh session, would be completed by 1995.

55. His country supported the Commission's work in the area of training and technical assistance and would continue to participate in regional initiatives. In that connection, the Willem Vis International Commercial Arbitration Moot, organized by the Institute of International Commercial Law at Pace University with UNCITRAL support, provided an ideal forum for the discussion of the Commission's texts and for the dissemination of information about those texts to

universities and potential future international lawyers. Australia had participated in the inaugural meeting in 1994.

56. His delegation welcomed the operation of the Case-law on UNCITRAL Texts system (CLOUT) as an additional tool for international trade law research.

57. He referred to the International Trade Law Conference organized annually by his country; in 1994, the Conference would focus on the outcomes of the Uruguay Round and their significance for Australia and the region. The Conference would once again make use of the work done by UNCITRAL.

58. Mr. ENAYAT (Islamic Republic of Iran) said that his country attached great importance to the work of UNCITRAL, in which it had participated actively. The Central Bank had adopted in December 1993 the basic principles underlying the Model Law on International Credit Transfers. It had adopted that system in view of the increasing use of electronically-transmitted payment orders. With regard to dissemination of UNCITRAL texts, the importance of which was obvious, the Iranian Ministry of Foreign Affairs had recently prepared and published in the Persian language an exhaustive commentary on the Model Law on International Credit Transfers.

59. Similarly, his country attached great importance to the preparation of legal rules on electronic data interchange and took the view that, in future, the Working Group on Electronic Data Interchange should consider the legal issues which might arise in the context of relations between service users and providers, such as electronic communications networks.

60. In respect of the UNCITRAL Model Law on Procurement of Goods, Construction and Services, the text of which had been adopted by the Commission at its twenty-seventh session, it was to be hoped that the Model Law would be another significant UNCITRAL contribution to the development of international trade law.

61. His delegation welcomed the preparation of the draft Guidelines for Preparatory Conferences in Arbitral Proceedings. At the same time, other considerations should be taken into account in that regard. First, the advisability of holding one or more preparatory conferences depended on the circumstances of each particular case; secondly, the arbitral tribunal should not hold preparatory conferences if one of the parties objected and failed to participate in them; and thirdly, the revision of the draft Guidelines should be entrusted to one of the Commission's working groups.

62. His delegation also welcomed the compilation of three editions of the CLOUT series, which contained abstracts of court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. In future, that initiative could be expanded by communicating it to users, encouraging them to formulate observations and to carry out scientific research.

63. As to the possibility of recommending the use of the Uniform Customs and Practice for Documentary Credits as revised by the International Chamber of Commerce, any decision by UNCITRAL in that regard must be taken with careful consideration.

64. Lastly, he expressed his appreciation for the Commission's activities in the fields of training and technical assistance, which were of great importance to developing countries.

The meeting rose at 5.05 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
5th meeting
held on
Friday, 30 September 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 5th MEETING

Chairman: Mr. LAMPTEY (Ghana)

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The meeting was called to order at 10.40 a.m.

ELECTION OF OFFICERS

1. The CHAIRMAN recalled that there were three candidates for the two posts of Vice-Chairman: Mr. Chaturvedi (India), Mr. Madej (Poland) and Mr. Martens (Germany). It was his understanding that the informal consultations concerning the election of the two Vice-Chairmen had not, unfortunately, been conclusive, so that the Committee was obliged to take a vote.

2. Mr. MARTENS (Germany) said that he was withdrawing his candidacy for one of the posts of Vice-Chairman. Past experience had taught him that it was important for the orderly conduct of its work that the Committee should take action by consensus, particularly regarding procedural matters. He hoped thereby to facilitate the task of the Committee and its Chairman.

3. The CHAIRMAN thanked the representative of Germany, whose decision was in keeping with the spirit that ought to prevail within the Sixth Committee.

4. Mr. CHATURVEDI (India), supported by Mr. MADEJ (Poland), thanked the Group of Western European and other States and expressed his deep gratitude to the representative of Germany in particular for the spirit of compromise he had displayed.

5. The CHAIRMAN announced that there was only one candidate for the post of Rapporteur, Mrs. Fernandez de Gurmendi (Argentina) and said he would take it that the Committee wished to elect Mr. Chaturvedi (India) and Mr. Madej (Poland) Vice-Chairmen and Mrs. Fernandez de Gurmendi (Argentina) Rapporteur.

6. It was so decided.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued) (A/49/17, A/49/427)

7. Ms. BARRETT (United Kingdom) welcomed the fact that the United Nations Commission on International Trade Law (UNCITRAL) had concluded its consideration of the Model Law on Procurement of Goods, Construction and Services, which was a valuable addition to the Model Law on Procurement of Goods and Construction adopted in 1993. That law, together with the Guide to Enactment, would be a valuable resource for countries drafting legislation on those subjects.

8. Her delegation welcomed the work started by UNCITRAL on the preparation of a set of guidelines concerning preparatory conferences in arbitral proceedings. The objective of the guidelines - to set out clearly for the parties the kind of issues which could be agreed by them before a formal arbitration commenced - was a worthwhile one. Work on the guidelines should be completed before the Commission's twenty-eighth session, taking account of the comments made by experts at the conference to be held by the International Council for Commercial

Arbitration in November 1994. Those guidelines would be a valuable addition to other UNCITRAL texts on arbitration.

9. With regard to the Working Group on Electronic Data Interchange (EDI), her delegation was pleased to see that UNCITRAL had set a timetable to ensure that the work on core provisions of a legal framework for the use of EDI was completed before its 1995 session. Considering the importance of that subject, it was understandable that the Working Group had set itself a demanding schedule.

10. Her delegation was gratified to see that the Working Group preparing the draft convention on independent guarantees and stand-by letters of credit was expected to produce the final text in time for consideration at the Commission's 1995 session.

11. Recalling the concerns which had been raised in previous years about the level of participation by developing countries in the work of UNCITRAL, she was pleased to see from the Secretary-General's report contained in document A/49/427 that the Trust Fund requested by the General Assembly had been established. She hoped that it would facilitate the participation of experts from developing countries in the work of the Commission.

12. Mr. AYEWAH (Nigeria) welcomed the adoption by UNCITRAL of the Model Law on Procurement of Goods, Construction and Services, which marked a significant step towards making international commercial law uniform. The Model Law had many virtues, among which were efficient management of resources through competitive pricing, transparency, responsibility, accountability and fairness both to the procuring State and the contractor. It was designed to eliminate abuses while assuring the public that government purchasers were spending public funds in a responsible manner. Such terms were particularly suitable to a developing country like Nigeria, which engaged in procurement largely through the public sector and where scarce resources must be shared between competing interests. On the international plane, the Model Law promised to remove obstacles to international trade created by inadequate, outdated, and, in some cases, inconsistent national laws. His delegation therefore recommended that States should adopt it with appropriate modifications, according to their national situations. The Guide to Enactment of the Model Law in domestic legislation adopted by UNCITRAL at its twenty-seventh session should assist States in the elaboration of appropriate legislation in that regard.

13. Many developing countries benefited from a training and technical assistance programme run by UNCITRAL in the form of seminars and symposia. The programme had proven to be a useful instrument for the dissemination of UNCITRAL texts and had contributed in no small measure to the increase of public awareness of the Commission's work. In addition, the UNCITRAL secretariat had in some cases provided assistance to States to review their national laws or enact new legislation in line with UNCITRAL model laws or conventions. The sharp increase in demand for that programme from States, especially from developing countries and States in transition, was evidence of its impact. His delegation was therefore pleased with the Secretariat's plan to hold more

seminars in developing countries, particularly in Africa. It would be useful to increase the number of interregional and regional training seminars. He also expressed appreciation to donor countries which provided resources for the increased participation of developing countries in UNCITRAL seminars and symposia. Unfortunately, resources for that purpose were dwindling. Perhaps the Sixth Committee could ensure that the UNCITRAL programme of seminars and symposia did not suffer and that adequate resources were provided for it.

14. In that connection he noted that the Secretariat had begun to take action to implement General Assembly resolution 48/32, concerning the establishment of a trust fund to enable the Commission to discharge its obligations to States wishing to participate in its work, and he appealed to States to contribute to the Trust Fund.

15. His delegation believed that the publication of case-law on UNCITRAL texts (CLOUT) would become a useful educational tool for the dissemination of UNCITRAL texts and would help promote their uniform interpretation. He therefore urged that the Secretariat be provided with adequate resources, within existing means, to carry out the additional responsibility placed on it with respect to CLOUT.

16. His delegation also noted with satisfaction the chapter of the report concerned with the status of UNCITRAL Conventions and the increase in accessions to a number of them. It was concerned, however, at the slow pace of adoption by States of the United Nations Convention on the Carriage of Goods by Sea, 1978 ("the Hamburg Rules"). The coexistence of two liability regimes - the Hamburg Rules and the Hague Rules (1924) or Hague-Visby Rules (1968) and their respective protocols - was cause for concern. The Hamburg Rules were meant to replace the Hague Rules but they were not receiving the support they deserved. That state of affairs was creating disparities in the shipping liability regime; the growing disparity in national laws were also creating confusion. Nigeria therefore urged States to make every effort either to adhere to the Hamburg Rules or to promote unification on the basis of the more up-to-date liability regime offered by those Rules.

17. His delegation commended the Commission's work on the draft convention on guarantees and stand-by letters of credit and on electronic data interchange. It looked forward to the early conclusion of work in those areas. It also commended current initiatives in cross-border insolvency and "build-operate-transfer" projects.

18. Mr. POLITI (Italy) said that his delegation welcomed the adoption of the UNCITRAL Model Law on Procurement of Goods, Construction and Services and of the Guide to Enactment of the Model Law. It believed that those instruments would greatly contribute to the harmonization and unification of the law in the procurement of services.

19. His delegation commended the progress made by UNCITRAL towards preparing the text of the guidelines for preparatory conferences in arbitral proceedings and of the draft convention on independent guarantees and stand-by letters of credit. It was confident that in both cases the Commission would be able to

complete its work at its twenty-eighth session, in 1995. Moreover, it concurred with the opinion expressed in the report that the Working Group on Electronic Data Interchange should aim to complete a draft a draft set of basic model statutory provisions on EDI at its twenty-eighth or twenty-ninth session.

20. His delegation was glad to note that three editions of the CLOUT abstracts series had been published so far. Those publications would be highly beneficial in promoting the uniform interpretation and application of the statutory texts of UNCITRAL.

21. With respect to the future work of UNCITRAL, his delegation was pleased that work had been undertaken on the issues of legal aspects of receivables financing and, in particular, of cross-border insolvency. There was a need to explore the possibility of developing legal mechanisms and instruments to reduce disparities and conflicts between national laws relating to insolvency proceedings. Further study in the areas of judicial cooperation and access to foreign courts and recognition of orders issued by such courts would be a significant step in that direction.

22. With regard to training and assistance, his delegation was particularly satisfied that the Secretariat had agreed to co-sponsor the International Trade Law Postgraduate Course to be organized by the University Institute of European Studies and the International Training Centre of the International Labour Organization in Turin.

23. Mr. DARMOSUTANTO (Indonesia) said that his delegation was pleased that UNCITRAL had organized various symposia and seminars which had been very useful for developing countries. There was no doubt that the training and technical assistance provided by UNCITRAL contributed greatly to a better understanding and use of the texts prepared by the Commission. His delegation therefore welcomed the efforts made by the Secretariat to increase the number of seminars and symposia in that area.

24. His delegation felt that the Model Law on Procurement of Goods, Construction and Services contained important legal precepts which should serve as a guide for States in codifying their national laws on procurement. The title of the model law was very appropriate since it fully reflected the difference between the scope of the model law and that of the earlier model law on procurement of goods and construction which had not covered procurement of services.

25. It was gratifying that there was general support for carrying out further deliberations on the draft guidelines for preparatory conferences in arbitral proceedings. Model laws in international commercial arbitration were of particular importance to developing countries. They had seldom been the seat of such arbitration since their national laws contained legal rules which were more appropriate for domestic arbitration than for international commercial arbitration. Therefore, the undertaking by UNCITRAL to prepare guidelines would meet the needs for legal technical assistance of third world nations. His delegation looked forward to the revised draft guidelines to be submitted to the

Commission at its twenty-eighth session. In that connection, the holding of the XIIth International Arbitration Congress by the International Council for Commercial Arbitration (ICCA) at Vienna in November 1994 would provide an opportunity for practitioners from around the world to offer their input to the development of law in that field.

26. The question of the legal problems arising from the conclusion of contracts by electronic means was of great importance in banking practice and also touched upon more general problems concerning the impact of technology on contract law. He welcomed the preparation of legal rules on electronic data interchange (EDI) by the working group on EDI. In that context, he supported the recommendation that UNCITRAL should undertake work on the issue of negotiability and transferability of rights in goods in a computer-based environment as soon as it had completed the model statutory or "core" provisions.

27. His delegation had noted with interest the three editions of the CLOUT abstracts containing 52 court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. Those documents should be made available in various languages through electronic communications systems to users around the world. The Secretariat must ensure that adequate financial resources were allocated to allow the effective operation of CLOUT.

28. With regard to the Commission's future work, the Indonesian delegation welcomed the inclusion of certain additional issues for consideration by the Secretariat, including legal aspects of receivables financing, cross-border insolvency and build-operate-transfer projects. Finally, it was heartening to note the Commission's coordination of its work with that of other international organizations, including its association with the Asian-African Legal Consultative Committee, with a view to promoting and taking follow-up action on its legal texts.

29. Mr. DOPKYUNAS (Belarus) said that the Model Law on Procurement of Goods, Construction and Services adopted by the Commission at its twenty-seventh session would be very useful for the efforts currently being made to improve and unify Belarusian legislation in that field in order to create a juridical environment conducive to the success of the country's economic reforms.

30. The Belarusian delegation wished to stress the importance of the first discussion of the draft Guidelines for Preparatory Conferences in Arbitral Proceedings and noted with appreciation the Commission's stated intention to include in its work on the revised draft valuable critical input from the work of the XIIth International Arbitration Congress.

31. His delegation regarded the elaboration of legal rules on electronic data interchange as a very promising and important undertaking. Like the members of the Commission, his delegation supported the idea of beginning the preliminary work on the issue of negotiability and transferability of rights in goods in a computer-based environment, a field in which the unification and streamlining of legal provisions were especially critical.

32. Finally, with regard to the Commission's future work, the Belarusian delegation hoped that the study undertaken by the Secretariat on the expediency of elaborating harmonized rules on cross-border insolvency and legal rules concerning build-operate-transfer projects (BOT) would lead to the inclusion of those problems in the Commission's agenda.

33. Mr. HAFNER (Austria) said that the UNCITRAL Model Law on Procurement of Goods, Construction and Services, which widened the scope of application of the previous Model Law on the same subject, was timely, not only because it responded to the need for harmonization in that legal field which had arisen as a result of the changes in the economic structures of certain European States, but also because it would facilitate international competition in public procurement and was in harmony with the development of the General Agreement on Tariffs and Trade (GATT). Moreover, the separate existence of the two instruments offered a choice to States.

34. With regard to the draft Guidelines for Preparatory Conferences in Arbitral Proceedings, the Austrian delegation was of the view that preparatory conferences could assist those who were not so experienced in using that kind of dispute settlement procedure as they would make the procedure itself predictable. However, the preparatory conferences should not work to the detriment of one of the salient features of the arbitration procedure, namely, its flexibility.

35. The Austrian delegation was confident that the comments received at the XIIth International Arbitration Congress and the discussions during the twenty-seventh session of the Commission would assist the Secretariat in drawing up a revised version of the draft Guidelines and facilitate the production of the final text at the Commission's following session.

36. As for the draft convention on independent guarantees and stand-by letters of credit, even though the convention had not yet entered into force, its objective value should not be underestimated: even States which would not be bound by an instrument that had already found general approval could hardly escape its persuasive authority.

37. The merit of the Commission's work in the field of electronic data interchange was that such work did not seek to harmonize existing domestic legislation in the field but to deal with new problems and to attempt to find solutions which could attract broad support so as to make unnecessary a later effort to harmonize legal regimes.

38. The extent to which the publication of abstracts of Case Law on UNCITRAL Texts was appreciated by States could be measured by the fact that other international organizations were attempting to follow the Commission's example. Nevertheless, the system could achieve its full effect only if some sort of information link was established to ensure access by domestic courts and lawyers to such information. Only under such circumstances could the system substantially contribute to the harmonization of the jurisprudence relating to

the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration.

39. The complexity of modern legislation governing in particular international trade law in all its aspects required sufficient training and technical assistance. The Austrian delegation therefore appreciated the Commission's activities in that field, especially the regional and national seminars, and regretted that only a portion of the requests for training and assistance could be met.

40. In that context, the Austrian delegation wished to express its satisfaction with the organization by the Institute of International Commercial Law at Pace University (New York) of the first Willem C. Vis International Commercial Arbitration Moot, which had been held at Vienna in March 1994. That type of exercise was an extremely useful means of training future lawyers and fit very well into the Commission's general training and assistance programme.

41. Mrs. TSONEVA (Bulgaria) welcomed the Commission's contribution to the progressive development and codification of international trade law. Thanks to the instruments which it elaborated, the Commission was making a valuable contribution to the development of equitable commercial relations and to the elimination of all elements of unpredictability in international trade. In that connection, the UNCITRAL Model Law on Procurement of Goods, Construction and Services and the draft Guide to Enactment were important instruments. The Model Law, which provided a modern and detailed interpretation of commercial relations, was an effective compromise between existing legal systems and represented a judicious balance that was capable of safeguarding the interests of all parties involved in procurement. The Bulgarian legislature would establish the principles for the unification of procedures and for freedom of contract in the future commercial law of Bulgaria.

42. The Bulgarian delegation was of the view that, as the principal legal body concerned with trade in a universal organization, the Commission should monitor the consideration of issues in that field by other organizations, such as the Economic Commission for Europe and the European Union. Her delegation also recognized the importance, as part of the progressive development of international trade law, of work on the elaboration of a draft convention on independent guarantees and stand-by letters of credit by the Working Group on International Contract Practices. In light of the interest which the developing countries and countries in transition had in that field, she hoped that the Commission would consider the draft convention at its twenty-eighth session.

43. Mr. MUBARAK (Egypt) recalled that, at the conclusion of the work of its twenty-seventh session on the draft Model Law on Procurement of Goods and Construction, the Commission had agreed on the final form of the model provisions on procurement of services. In that connection, it had decided to include those provisions in a global text on procurement, more specifically in the UNCITRAL Model Law on Procurement of Goods, Construction and Services, thereby providing a unique reference source for States wishing to rely on those provisions for the elaboration of their own laws.

44. In that regard, the Egyptian delegation was also of the view that there was no need to amend the UNCITRAL Model Law on Procurement of Goods and Construction which the General Assembly had endorsed in resolution 48/33 adopted at its forty-eighth session. Moreover, Egypt considered that the procurement procedures provided for in the Model Law were not too numerous and it was therefore not necessary to reduce their number in order for States to adopt them more easily. Indeed, States were not obliged to incorporate all of them into their national legislation, since they were only options which, because of their diversity, enabled each State to select those procedures that were best suited to its own economic and financial systems.

45. Referring to chapter IV of the Model Law, concerning rules for the procurement of services, he expressed his delegation's view that various procurement procedures should be applied to services. They should not be limited to requests for tenders and direct requests for tenders but should include tendering and restricted tendering and all other available procedures in so far as such procedures were in accordance with the customary practices of certain States and were not contrary to the domestic legislation applicable in that area.

46. The draft Guidelines for Preparatory Conferences in Arbitral Proceedings, which were the subject of a note by the Secretariat were a good beginning which should be followed up. The Guidelines should improve the conduct of arbitral proceedings and expedite the settlement of disputes, which was the raison d'être of arbitration. Moreover, preparatory conferences provided a forum in which the parties in dispute could meet and agree on details which could generally not be settled as part of an arbitration agreement before the dispute arose or at the time when the dispute was considered by the arbitration body. Such conferences would therefore help to save time and, more important still, to settle certain disputes without referring them to arbitration.

47. Welcoming the progress achieved during the deliberations of the Working Group on International Contract Practices on the draft articles on independent guarantees and stand-by letters of credit, he said that his delegation wished to make some observations in that regard. First of all, it would prefer to have the draft articles to take the form of a model law rather than an international convention in order to give States time to review their domestic legislation in the light of the provisions adopted.

48. Moreover, unlike the questions usually considered by the International Law Commission, the draft articles dealt with very detailed questions (problems of conflicting laws, the choice of applicable law, whether it was appropriate to refer matters to ordinary courts or to arbitration, the jurisdiction of arbitration bodies, etc.) which were generally determined by domestic legislation and fell within the competence of States. Thus, making the draft articles into a full convention might complicate their adoption because of the substantive differences which might exist between the provisions of the convention and the domestic legislation of States. On the other hand, giving them the form of a model law would allow States time to consider each provision at leisure and in depth.

49. Moreover, his delegation did not favour extending the scope of application of the draft articles for fear that they would then encroach on areas which were already governed by other international conventions such as the United Nations Convention on Contracts for the International Sale of Goods, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in civil and commercial matters, the Lugano Convention which governed similar questions and the Rome Convention of 1980 on the law applicable to contractual obligations. Lastly, in the past, the work of UNCITRAL had demonstrated the effectiveness of giving draft articles the form of model laws, particularly when such articles dealt with questions which affected domestic law. In that connection, his delegation wished to refer to the UNCITRAL on Arbitration Rules which had been adopted in 1976 and ratified by many third world countries, the UNCITRAL Model Law on International Credit Transfers and the UNCITRAL Model Law on Procurement.

50. He referred to his delegation's great interest in the work of UNCITRAL since its establishment in 1968. The contribution made by one of Egypt's most distinguished experts in trade law, Mr. Mouhsen Chafiq, to the Commission's work had served to express not only Egypt's point of view but also that of other countries in a similar situation, to enrich the debate and to arrive at model laws and balanced agreements which had been gradually implemented. In that connection, he stressed that his country had recently promulgated a new law on the arbitration of international administrative and commercial disputes which was based, in large part, on the UNCITRAL Arbitration Rules and in 1990, a law on maritime trade which was also largely based on the provisions of the United Nations Convention on the Carriage of Goods by Sea, adopted in 1978 (Hamburg Rules).

51. In that connection, his delegation believed that, if the Commission on International Trade Law was to pursue its activities effectively and be able to give impetus to the process of harmonizing and unifying international trade law, it would have to meet a dual requirement. First, training programmes and fellowships in trade law for nationals of developing countries and, in particular, the least developed countries must be continued and improved. In that connection, his delegation welcomed the activity undertaken by UNCITRAL and by the Secretariat which, in 1993, had organized six national seminars held in different regions of the world. Second, the different legal systems must be duly represented during the debates of the Commission. While that condition had theoretically been fulfilled with the increase in the number of members of the Commission to 36, it was none the less evident in practice that most developing States members of the Commission had difficulty sending representatives to its meetings. Those difficulties were due to the increased cost of travel and accommodation which the States concerned must cover in order to send representatives to participate in working group meetings which sometimes lasted for weeks. The problem had repercussions on the adoption of agreements and model laws which were in force and applied. He referred in that connection to General Assembly resolution 48/32, in which the Assembly requested the Secretary-General to establish a separate trust fund for the Commission to grant assistance to developing States in order to ensure their full participation in the work of the Commission and drew attention to the progress which had been

achieved in that area and was mentioned in the report of the Secretary-General (A/49/427) on that question.

52. Miss RODRIGUEZ-SIFUENTES (Mexico) said that the new UNCITRAL Model Law on Procurement of Goods, Construction and Services, which complemented the Model Law on the Procurement of Goods and Construction, would constitute a uniform trade law instrument for the lawmakers of all countries which would be useful for the promotion of trade between States. It introduced procedures which would foster integrity, confidence, equity and transparency in procurement. It would be of considerable assistance to, in particular, countries in transition in strengthening their legislation or, if necessary, in establishing new laws in that field.

53. Her delegation welcomed the draft Guidelines for Preparatory Conferences in Arbitral Proceedings elaborated by UNCITRAL, for it viewed international commercial arbitration as an essential institution for the settlement of commercial disputes by alternative means and for progressively achieving uniformity in international trade law. The Guidelines, which were certain to facilitate the smooth conduct of arbitral proceedings, would be of great value, particularly for countries with little experience in that method of settling disputes. Her delegation therefore hoped that UNCITRAL would be able to finalize the text of the draft Guidelines at its twenty-eighth session. It also hoped that the Working Group on Electronic Data Interchange would be able to complete the preparation of legal rules on electronic data interchange (EDI) by the twenty-eighth session of UNCITRAL so that the Commission could continue to develop uniform rules concerning that new and vital commercial practice, whose wider use would increase commercial exchanges and make them more routine.

54. Upon completion of the draft, the Working Group should begin consideration of the issue of negotiability and transferability of rights in goods in a computer-based environment so as to facilitate the transport of goods and related transactions during the transport phase.

55. Her delegation welcomed the fact that the Working Group on International Contract Practices was about to complete the preparation of a draft convention on independent guarantees and stand-by letters of credit. Another important fact to bear in mind was the publication of the first three editions of the abstract series on case law on UNCITRAL texts (CLOUT) which would help to promote the uniform interpretation of the statutory texts governing trade between States.

56. Her delegation reaffirmed its support for the important preparatory work on the legal aspects of receivables financing.

57. Lastly, her delegation welcomed the fact that UNCITRAL was continuing its programme of training and assistance despite financial difficulties and hoped that, at its twenty-eighth session, the Commission would not abandon the tradition it had begun of organizing a symposium on international trade law every two years.

58. Mr. BELLOUKI (Morocco) expressed appreciation to the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) for his outstanding introduction of the report by that body and stressed that it was undeniable that UNCITRAL was carrying out remarkable work in the technical and legal areas, which was the result of the efforts made by the eminent experts and the reason for the quality of the texts drawn up. Nevertheless, developing countries felt somewhat frustrated at not being able to contribute to the elaboration of UNCITRAL texts because of the burden imposed by regular participation by their experts in the work of the Commission and its working groups. Representative participation by all groups of countries would make it possible to draw up balanced texts, whose implementation would be more widely supported and accepted.

59. Referring to the Model Law on Procurement of Goods, Construction and Services, his delegation welcomed the adoption of a text with an expanded scope and a guide to enactment, whose usefulness was obvious. The Model Law adopted was of great importance in that it strengthened trust in and the equity and transparency of procurement procedures. It was also designed to promote fair competition and trading in a world resolutely committed to the liberalization of international trade. In that context, the Model Law would help all countries whose economies were in transition, particularly developing countries, to improve or draw up their own legislation on procurement. Accordingly, the international trading community could only welcome the elaboration of an instrument which would surely help to unify and harmonize national legislation in that field.

60. With regard to international commercial arbitration, his delegation stressed the effectiveness and usefulness of that method of settling trade disputes, owing to the speediness in dealing with transactions, the confidential nature of discussions, protection of important documents and specialization by arbitrators. For that reason, the establishment of guidelines, if only non-binding ones, for preparatory conferences within the framework of arbitration procedures was useful work because the Guidelines would make it possible to overcome procedural difficulties in order to ensure the smooth functioning of arbitration. The Guidelines should also make it easier to take the necessary measures to plan judiciously the stages in the procedure in order to ensure success. They would also promote the standardization of the procedural mechanisms in the field of arbitration and efforts to enhance their effectiveness. Accordingly, his delegation hoped very much that UNCITRAL would be able to adopt the text of the Guidelines in 1995.

61. Turning to guarantees and stand-by letters of credit, he hoped that a draft convention would be drawn up and adopted by the Commission at its twenty-eighth session. With regard to electronic data interchange and the drafting of legal rules in that field, his delegation felt that work should be stepped up in order to develop rather flexible model legislative provisions within the framework of an approach that was not overly ambitious.

62. He welcomed the importance given to case-law on UNCITRAL texts, and, particularly, and improving the system in that area since that would make it

possible to harmonize the interpretation and application of the texts drawn up under the auspices of the Commission. His delegation also expressed appreciation to the International Chamber of Commerce for drawing up a revised text of the uniform customs and practice for documentary credits and was sure that it would prove to be useful in international transactions.

63. In the field of training and technical assistance, the Commission should not slacken its efforts to help developing countries deal with the complexity of the texts drawn up by UNCITRAL and become familiar with provisions that sometimes were elaborated in their absence. In that connection, he expressed appreciation to the donor countries for their generous contributions making it possible to continue the training and technical assistance programme.

64. Ms. BOUM (Cameroon) said that the most recent UNCITRAL report demonstrated that, as in previous years, the Commission had made progress in 1994 on most of the items on its agenda - procurement of goods, construction and services; electronic data interchange, guarantees and stand-by letters of credit - and had begun consideration of the draft Guidelines for Preparatory Conferences in Arbitral Proceedings. While the Commission's work should certainly be commended by the Committee, her delegation felt that the Committee should, more than in the past, truly play its role as a body providing guidance to UNCITRAL and not simply defer to the decisions by the Commission, even if the matters that it considered were very technical.

65. As indicated in paragraph 242 of the report under consideration (A/49/17), Cameroon had become a party to the United Nations Convention on the Carriage of Goods by Sea, "the Hamburg Rules". In so doing, her country was filling a legal gap created in its positive law in 1985 when it denounced the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading.

66. In that regard, while her delegation was also concerned about the problems created by the existence of two different legal regimes on responsibility for the transport of goods by sea, like most Commission members, Cameroon did not feel that revising the Hamburg Rules was the appropriate solution to those difficulties. On the contrary, she felt that it was necessary to continue to search for ways to ensure broad adherence to the Rules, including the adoption of resolutions inviting States which had not yet done so to consider becoming parties to the United Nations Convention. Her delegation was prepared to work towards that end at the current session with other interested delegations.

67. Lastly, as a developing country, Cameroon could not but welcome the continuation of the Commission's training and technical assistance activities. She also expressed satisfaction that, as indicated in paragraph 7 of document A/49/427, the process of setting up the Trust Fund pursuant to the request of the General Assembly contained in paragraph 5 of resolution 48/32 was now completed and she hoped that the Fund would soon have sufficient resources to ensure the participation by all Member States in the work of UNCITRAL and its working groups.

68. Ms. GOLAN (Israel) expressed satisfaction with the Commission's work in recent years in the harmonization and unification of international trade law and wished it further fruitful work and achievements during the coming year.

69. Israel had taken part in the work of the Working Group on Electronic Data Interchange and the work on guarantees and stand-by letters of credit. The UNCITRAL Model Law on Procurement of Goods, and Construction had already had an impact on Israeli domestic legislation. The completion of work by the Working Group with regard to the draft model provisions on procurement of services was highly appreciated since that aspect reflected the practical development of international trade and progress towards the new international economic order and needed special elaboration and model rules and guidance.

70. The need for coordination with the activities of other international organizations in the field of international trade law, private law and private international law should always be taken into consideration in order to avoid duplication. Israel supported the efforts by the Commission to promote training and assistance in international trade by sponsoring symposia and seminars in that field. Having attended such a seminar in 1991, she could personally attest to the benefits of such efforts.

71. Mr. MORAN BOVIO (Chairman of the United Nations Commission on International Trade Law) expressed appreciation to the members of the Committee on his own behalf and on behalf of the Commission members, the Secretary and the staff of the UNCITRAL secretariat and said that the discussion which had just taken place demonstrated that the members of the Committee understood very well the role of international trade law in bringing about a better world.

72. The CHAIRMAN said that the Committee had thus completed consideration of agenda item 138 and hoped that a draft resolution on that item could be submitted speedily.

The meeting rose at 12.45 p.m.